

# 1452.280-2 Notice of Indian Economic Enterprise set-aside.

As prescribed in 1480.503(e)(2), insert the following clause in solicitations and contracts involving Indian Economic Enterprise set-asides. If the solicitation is oral, information substantially identical to that contained in the provision must be given to potential offerors.

Notice of Indian Economic Enterprise Set-Aside (FEB 2021)

(a) Definitions as used in this clause.

*Alaska Native Claims Settlement Act (ANCSA)* means Public Law 92-203 (December 18, 1971), 85 Stat. 688, codified at 43 U.S.C. 1601-1629h.

*Indian* means a person who is an enrolled member of a Federally Recognized Indian Tribe.

*Indian Economic Enterprise* means any business activity owned by one or more Indians or Federally Recognized Indian Tribes, provided that:

(i) The combined Indian or Federally Recognized Indian Tribe ownership of the enterprise shall constitute not less than 51 percent;

(ii) The Indians or Federally Recognized Indian Tribes shall, together, receive at least 51 percent of the earnings from the contract; and

(iii) The management and daily business operations of an Indian Economic Enterprise must be controlled by one or more individuals who are Indians. To ensure actual control over the enterprise, the individuals must possess requisite management or technical capabilities directly related to the primary industry in which the enterprise conducts business. Management of Tribally owned Indian Economic Enterprises may be provided by:

(A) Committees, teams, or Boards of Directors which are controlled by one or more members of Tribe, or;

(B) Non-Tribal members if the enterprise can demonstrate that the Tribe can hire and fire those individuals, that it will retain control of all management decisions common to Committees, teams, or Boards of Directors. Common management decisions, include strategic planning, budget approval, and the employment and compensation of officers. A written management development plan must also exist which shows how Tribal members will develop managerial skills sufficient to manage the enterprise or similar enterprises in the future.

The enterprise must meet the requirements of (i) through (iii) throughout the following time periods:

(1) At the time an offer is made in response to a written solicitation;

(2) At the time of contract award; and,

(3) During the full term of the contract.

*Federally Recognized Indian Tribe* means an Indian Tribe, band, nation, or other Federally

recognized group or community on the List of Federally Recognized Tribes. This definition includes any Alaska Native regional or village corporation under the Alaska Native Claims Settlement Act (ANCSA).

*List of Federally Recognized Tribes* means an entity appearing on the United States Department of the Interior's List of federally recognized Indian Tribes published annually in the Federal Register pursuant to Section 104 of Public Law 103-454, codified at 25 U.S.C. 5131.

*Representation* means the positive statement by an enterprise of its eligibility for preferential consideration and participation for acquisitions conducted under the Buy Indian Act, 25 U.S.C. 47, in accordance with the procedures in Subpart [1480.8](#).

(b) General.

(1) Under the Buy Indian Act, offers are solicited only from Indian Economic Enterprises.

(2) The Contracting Officer (CO) will reject all offers received from ineligible enterprises.

(3) Any award resulting from this solicitation will be made to an Indian Economic Enterprise, as defined in paragraph (a) of this clause.

(c) Required Submissions. In response to this solicitation, an offeror must also provide the following:

(1) A description of the required percentage of the work/costs to be provided by the offeror over the contract term as required by section 1452.280-3, Subcontracting Limitations clause; and

(2) Qualifications of the key personnel (if any) that will be assigned to the contract.

(d) Required Assurance. The offeror must provide written assurance to the CO that the offeror is and will remain in compliance with the requirements of this clause. It must do this before the CO awards the Buy Indian contract and upon successful and timely completion of the contract, but before the CO accepts the work or product.

(e) Non-responsiveness. Failure to provide the information required by paragraphs (c) and (d) of this clause may cause the CO to find an offer non-responsive and reject it.

(f) Eligibility.

(1) Participation in the Mentor-Protégé Program established under section 831 of the National Defense Authorization Act for Fiscal Year 1991 (25 U.S.C. 47 note) does not render an Indian Economic Enterprise ineligible for contracts awarded under the Buy Indian Act.

(2) If a contractor no longer meets the definition of an Indian Economic Enterprise after award, the contractor must notify the CO immediately and in writing. The notification must include full disclosure of circumstances causing the contractor to lose eligibility status and a description of any actions that the contractor will take to regain eligibility. If the contract is unable to regain eligibility, then the contractor must revise its the representations and certifications in the System for Award Management. Failure to give the CO immediate written notification means that:

(i) The economic enterprise may be declared ineligible as an IEE for future contract awards under this part; and

(ii) The CO may consider termination for default if it is in the best interest of the government.

(End of clause)

**Parent topic:** Subpart 1452.2 - Text of Provisions and Clauses